

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR DECISION
ON:

Education Code Sections 60607, subdivision (a),
60609, 60615, 60630, 60640, 60641, and 60643,
as amended by Statutes of 1997, Chapter 828;

Title 5, California Code of Regulations, Sections
850-874; and

Directed by Statutes 2004, Chapter 895, Section
19 (Assem. Bill No. 2855),

Effective January 1, 2005.

Case No.: 04-RL-9723-01

Standardized Testing and Reporting

OPENING BRIEF RE: NOTICE OF
RECONSIDERATION

HEARING DATE: May 26, 2005

REQUEST FOR INITIAL BRIEFING

Statutes 2004, Chapter 895, Section 19 (Assem. Bill No. 2855), directs the Commission on State Mandates (CSM) to reconsider the prior final decision in Standardized Testing and Reporting (STAR) Program mandate, as follows: Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted: (a) Chapter 975 of the Statutes of 1995. (b) Chapter 828 of the Statutes of 1997. (c) Chapter 722 of the Statutes of 2001. (d) Chapter 576 of the Statutes of 2000. Commission staff requests that the parties file simultaneous opening briefs and rebuttal comments on three issues.

ISSUES

- A. *In light of federal statutes enacted and state court decisions rendered since the named statutes were enacted, is there a new program or higher level of service imposed on school districts within the meaning of section 6, article XIII B of the California Constitution, and if so, are there costs mandated by the state pursuant to Government Code section 17514 and Government Code section 17556 1?*

On August 24, 2000 The Commission (7-0) determined the test claim legislation {(a) Chapter 975 of the Statutes of 1995, (b) Chapter 828 of the Statutes of 1997, (c) Chapter 722 of the Statutes of 2001, (d) Chapter 576 of the Statutes of 2000} and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program. The STAR Program required school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts were also required to engage in numerous activities related to test administration and reporting.

The Commission additionally found that the test claim legislation and regulations imposed a new program or higher level of service upon school districts since the law in effect prior to the enactment of the test claim legislation did not require the administration of achievement tests. Public education in California is a peculiarly governmental function administered by school districts as a service to the public. Moreover, the test claim legislation imposed unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the

Commission found that administering pupil achievement tests constituted a “program” within the meaning of section 6, article XIII B of the California Constitution.¹

Chapter 828, Statutes of 1997 ended the voluntary program and added Education Code section 60640, which, among other things, requires school districts to administer the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Education Code section 60640, subdivisions (b), (c); Education Code section 60641, subdivision (a); title 5, California Code of Regulations sections 851, 852, subdivision (b), 853 and 855.)

Under this legislation, school districts are required to designate a STAR Program district coordinator and to designate a STAR Program test site coordinator at each test site, each of whom is required to perform the specific duties set forth in DOE regulations, (Title 5, California Code of Regulations sections 857, 858, 859, 865, 867, and 868.), administer additional test to pupils of limited English proficiency who are enrolled in grade 2 through 11 if the pupil was initially enrolled in any school district less than 12 months prior to the date that the English language STAR Program test is given. (Education Code section 60640, subdivision (g); title 5, California Code of Regulations section 851, subdivision (a), and include the results of the tests given under the STAR Program in each pupil’s record of accomplishment. (Education Code section 60607, subdivision (a); Education Code section 60641, subdivision (a).)

Chapter 828/97 added Education Code section 60641, which, among other things, requires school districts to report the individual results of the STAR Program tests in writing to each pupil’s parents or guardians and to the pupil’s school and teachers (Education Code section 60641, subdivisions (b) and (c); title 5, California Code of Regulations section 863.) and report districtwide, school-level and class-level results to the school district’s governing board or county board of

¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

education. (Education Code section 60641, subdivision (d); title 5, California Code of Regulations section 864.)

School districts must prepare and submit a report to the Superintendent of Public Instruction (State Superintendent) listing, among other things, the number of pupils in grades 2 through 11, the number of pupils who took the STAR Program tests, the number of pupils that were exempt under subdivision (e) of Education Code section 60640, and the number of pupils who were exempted from the test at the request of their parents or guardians. (Education Code section 60640, subdivision (j); title 5, California Code of Regulations section 862.)

School districts have incurred and will incur costs relating to the following activities:

- To review the requirements in Chapter 828/97 and any regulations, DOE memoranda and test administration instructions relating to the STAR Program.
- To train administrators, teachers and other school district personnel on the requirements in Chapter 828/97 and any regulations, DOE memoranda and test administration instructions relating to the STAR Program including, without limitation, test administration and reporting requirements.
- To administer the tests for the STAR Program, including, without limitation, determining school district and test site test and test materials needs; purchasing testing materials; conducting an inventory of test materials received from the test publisher; resolving any discrepancies in the quantity of test materials received from the test publisher; distributing test materials to the appropriate test sites; conducting an inventory at each test site of the quantity of test materials received from the district central distribution point; resolving any discrepancies in the quantity of test materials received from the district; coordinating testing dates and make-up testing dates; collating and distributing tests, pre-identified answer

sheets, and other test materials at test sites to appropriate teachers or other school district personnel who administer the tests; preparing, executing, and collecting STAR Test Security Agreements from every person who has access to tests and other test materials; maintaining security over test material and test data; collecting, collating and submitting pupil demographic information; staff time of teachers, classroom aides, exam proctors and other school district personnel in administering the tests to pupils; collecting test materials following test administration; conducting an inventory of test materials collected at each test site; returning test materials and test data from test sites to a central school district collection point; conducting an inventory of test materials received at the school district central collection point from test sites; and returning test materials and test data to the test publisher.

- To maintain individual records of the tests in pupil records.
- To report the individual results of the STAR Program tests to the pupils' parents or guardians, to the pupils' schools, and the pupils' teachers, including preparation and mailing of reports.
- To report the results of the STAR Program tests to the school district governing board on a districtwide and school-by-school basis.
- To collect, collate and submit to the DOE the information on the STAR Program apportionment information report.
- To process requests for exemption from testing filed by parents and guardians.
- To review the IEPs of children with disabilities to determine if the IEPs contain an express exemption from testing.
- To determine the appropriate grade level test for special education pupils and to provide appropriate testing adaptations and accommodations for these pupils.

- To enter into and administer the contract with the test publisher for the STAR Program.
- To develop and implement procedures for items (a) through (k) above.

None of the Government Code section 17556 statutory exceptions to a finding of costs mandated by the state apply to this statute. In the Statement of Decision adopted by the CSM on August 24, 2000, the commission considered all relevant statutes and did not find that the STAR Program costs were federally mandated. It concluded that “the regulations of the STAR Program impose a reimbursable state-mandated program upon school districts.”

B. *Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?*

State funds are appropriated for STAR, however no funds have been appropriated by Chapter 828/97 for reimbursement of mandated cost claims in excess of the amount provided by the state. The state funds currently appropriated fall dramatically short in relation to the costs incurred by school districts throughout the state.

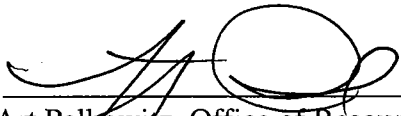
C. *What is the period of reimbursement for the commission’s decision on reconsideration?*

The period of reimbursement under consideration shall be prospectively from the date of the statement of decision.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on 24 February 2005, at San Diego, California, by:



Art Palkowitz, Office of Resource Development
San Diego Unified School District

PROOF OF SERVICE

RE: *Standardized Testing and Reporting*, CSM-97-TC-23

I am employed in the County of San Diego, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 4100 Normal Street, Room 3209, San Diego, California 92103.

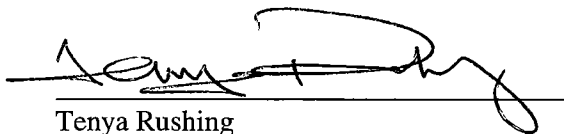
On February 24, 2005, I served the foregoing document(s) described as: Claimant's Request for Continuance

On the person/parties in this action by faxing and placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite #300
Sacramento, CA 95814

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 24, 2005 in San Diego, California.


Tenya Rushing